

**Cleveland Board
Of Education**

Vs.

Loudermill

U.S. Supreme Court

CLEVELAND BOARD OF EDUCATION v. LOUDERMILL, 470 U.S. 532 (1985)

470 U.S. 532

CLEVELAND BOARD OF EDUCATION v. LOUDERMILL ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 83-1362.

Argued December 3, 1984

Decided March 19, 1985 *

[Footnote *] Together with No. 83-1363, Parma Board of Education v. Donnelly et al., and No. 83-6392, Loudermill v. Cleveland Board of Education et al., also on certiorari to the same court.

In No. 83-1362, petitioner Board of Education hired respondent Loudermill as a security guard. On his job application Loudermill stated that he had never been convicted of a felony. Subsequently, upon discovering that he had in fact been convicted of grand larceny, the Board dismissed him for dishonesty in filling out the job application. He was not afforded an opportunity to respond to the dishonesty charge or to challenge the dismissal. Under Ohio law, Loudermill was a "classified civil servant," and by statute, as such an employee, could be terminated only for cause and was entitled to administrative review of the dismissal. He filed an appeal with the Civil Service Commission, which, after hearings before a referee and the Commission, upheld the dismissal some nine months after the appeal had been filed. Although the Commission's decision was subject to review in the state courts, Loudermill instead filed suit in Federal District Court, alleging that the Ohio statute providing for administrative review was unconstitutional on its face because it provided no opportunity for a discharged employee to respond to charges against him prior to removal, thus depriving him of liberty and property without due process. It was also alleged that the statute was unconstitutional as applied because discharged employees were not given sufficiently prompt postremoval hearings. The District Court dismissed the suit for failure to state a claim on which relief could be granted, holding that

because the very statute that created the property right in continued employment also specified the procedures for discharge, and because those procedures were followed, Loudermill was, by definition, afforded all the process due; that the post-termination hearings also adequately protected Loudermill's property interest; and that in light of the Commission's crowded docket the delay in processing his appeal was constitutionally acceptable. In No. 83-1363, petitioner Board of Education fired respondent Donnelly from his job as a bus [470 U.S. 532, 533] mechanic because he had failed an eye examination. He appealed to the Civil Service Commission, which ordered him reinstated, but without backpay. He then filed a complaint in Federal District Court essentially identical to Loudermill's, and the court dismissed for failure to state a claim. On a consolidated appeal, the Court of Appeals reversed in part and remanded, holding that both respondents had been deprived of due process and that the compelling private interest in retaining employment, combined with the value of presenting evidence prior to dismissal, outweighed the added administrative burden of a pretermination hearing. But with regard to the alleged deprivation of liberty and Loudermill's 9-month wait for an administrative decision, the court affirmed the District Court, finding no constitutional violation.

Held:

All the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures as provided by the Ohio statute; since respondents alleged that they had no chance to respond, the District Court erred in dismissing their complaints for failure to state a claim. Pp. 538-548.

(a) The Ohio statute plainly supports the conclusion that respondents possess property rights in continued employment. The Due Process Clause provides that the substantive rights of life, liberty, and property cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. "Property" cannot be defined by the procedures provided for its deprivation. Pp. 538-541.

(b) The principle that under the Due Process Clause an individual must be given an opportunity for a hearing before he is deprived of any significant property interest, requires "some kind of hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. The need for some form of pretermination hearing is evident from a balancing of the competing interests at stake: the private interest in retaining employment, the governmental interests in expeditious removal of unsatisfactory employees and the avoidance of administrative burdens, and the risk of an erroneous termination. Pp. 542-545.

(c) The pretermination hearing need not definitively resolve the propriety of the

discharge, but should be an initial check against mistaken decisions - essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. The essential requirements of due process are notice and an opportunity to respond. Pp. 545-546.

(d) The delay in Loudermill's administrative proceedings did not constitute a separate constitutional violation. The Due Process Clause [470 U.S. 532, 534] requires provision of a hearing "at a meaningful time," and here the delay stemmed in part from the thoroughness of the procedures. Pp. 546-547.

721 F.2d 550, affirmed and remanded.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACKMUN, POWELL, STEVENS, and O'CONNOR, JJ., joined, in Parts I, II, III, and IV of which BRENNAN, J., joined, and in Part II of which MARSHALL, J., joined. MARSHALL, J., filed an opinion concurring in part and concurring in the judgment, post, p. 548. BRENNAN, J., filed an opinion concurring in part and dissenting in part, post, p. 551. REHNQUIST, J., filed a dissenting opinion, post, p. 559.

James G. Wyman argued the cause for petitioners in Nos. 83-1362 and 83-1363 and respondents in No. 83-6392. With him on the brief for petitioner in No. 83-1362 was Thomas C. Simiele. John F. Lewis and John T. Meredith filed a brief for petitioner in No. 83-1363. John D. Maddox and Stuart A. Freidman filed a brief for respondents Cleveland Civil Service Commission et al. in No. 83-6392.

Robert M. Fertel, by appointment of the Court, 468 U.S. 1203 , argued the cause and filed briefs for respondents in Nos. 83-1362 and 83-1363 and petitioner in No. 83-6392.Fn

Fn [470 U.S. 532, 534] Briefs of amici curiae urging reversal in Nos. 83-1362 and 83-1363 were filed for the State of Ohio et al. by Anthony J. Celebrezze, Jr., Attorney General of Ohio, Gene W. Holliker and Christine Manuelian, Assistant Attorneys General, Charles A. Graddick, Attorney General of Alabama, Robert K. Corbin, Attorney General of Arizona, Tany S. Hong, Attorney General of Hawaii, Lindley E. Pearson, Attorney General of Indiana, Robert T. Stephen, Attorney General of Kansas, Frank J. Kelley, Attorney General of Michigan, Hubert H. Humphrey III, Attorney General of Minnesota, William A. Allain, Attorney General of Mississippi, Michael T. Greely, Attorney General of Montana, Brian McKay, Attorney General of Nevada, Gregory H. Smith, Attorney General of New Hampshire, Irwin I. Kimmelman, Attorney General of New Jersey, Robert WeFald, Attorney General of North Dakota, Michael Turpen, Attorney General of Oklahoma, David Frohnmayer, Attorney General

of Oregon, LeRoy S. Zimmerman, Attorney General of Pennsylvania, Mark V. Meierhenry, Attorney General of South Dakota, Bronson C. La Follette, Attorney General of Wisconsin, and Archie G. McClintock, Attorney [470 U.S. 532, 535] General of Wyoming; and for the National School Boards Association by Gwendolyn H. Gregory and August W. Steinhilber.

Briefs of amici curiae urging affirmance in Nos. 83-1362 and 83-1363 were filed for the American Civil Liberties Union of Cleveland Foundation by Gordon J. Beggs, Edward R. Stege, Jr., and Charles S. Sims; for the American Federation of State, County, and Municipal Employees, AFL-CIO, by Richard Kirschner; and for the National Educational Association by Robert H. Chanin and Michael H. Gottesman. [470 U.S. 532, 535]

JUSTICE WHITE delivered the opinion of the Court.

In these cases we consider what pretermination process must be accorded a public employee who can be discharged only for cause.

I

In 1979 the Cleveland Board of Education, petitioner in No. 83-1362, hired respondent James Loudermill as a security guard. On his job application, Loudermill stated that he had never been convicted of a felony. Eleven months later, as part of a routine examination of his employment records, the Board discovered that in fact Loudermill had been convicted of grand larceny in 1968. By letter dated November 3, 1980, the Board's Business Manager informed Loudermill that he had been dismissed because of his dishonesty in filling out the employment application. Loudermill was not afforded an opportunity to respond to the charge of dishonesty or to challenge his dismissal. On November 13, the Board adopted a resolution officially approving the discharge.

Under Ohio law, Loudermill was a "classified civil servant." Ohio Rev. Code Ann. 124.11 (1984). Such employees can be terminated only for cause, and may obtain administrative review if discharged. 124.34. Pursuant to this provision, Loudermill filed an appeal with the Cleveland Civil Service Commission on November 12. The Commission appointed a referee, who held a hearing on January 29, 1981. Loudermill argued that he had thought that his 1968 larceny conviction was for a misdemeanor rather than a felony. The referee recommended reinstatement. On July 20, 1981, the [470 U.S. 532, 536] full Commission heard argument and orally announced that it would uphold the dismissal. Proposed findings of fact and conclusions of law followed on August 10, and Loudermill's attorneys were advised of the result by mail on August 21.

Although the Commission's decision was subject to judicial review in the state courts, Loudermill instead brought the present suit in the Federal District Court for the

Northern District of Ohio. The complaint alleged that 124.34 was unconstitutional on its face because it did not provide the employee an opportunity to respond to the charges against him prior to removal. As a result, discharged employees were deprived of liberty and property without due process. The complaint also alleged that the provision was unconstitutional as applied because discharged employees were not given sufficiently prompt postremoval hearings.

Before a responsive pleading was filed, the District Court dismissed for failure to state a claim on which relief could be granted. See Fed. Rule Civ. Proc. 12(b)(6). It held that because the very statute that created the property right in continued employment also specified the procedures for discharge, and because those procedures were followed, *Loudermill* was, by definition, afforded all the process due. The post-termination hearing also adequately protected *Loudermill*'s liberty interests. Finally, the District Court concluded that, in light of the Commission's crowded docket, the delay in processing *Loudermill*'s administrative appeal was constitutionally acceptable. App. to Pet. for Cert. in No. 83-1362, pp. A36-A42.

The other case before us arises on similar facts and followed a similar course. Respondent Richard Donnelly was a bus mechanic for the Parma Board of Education. In August 1977, Donnelly was fired because he had failed an eye examination. He was offered a chance to retake the examination but did not do so. Like *Loudermill*, Donnelly appealed to the Civil Service Commission. After a year of wrangling about the timeliness of his appeal, the Commission heard [470 U.S. 532, 537] the case. It ordered Donnelly reinstated, though without backpay. 1 In a complaint essentially identical to *Loudermill*'s, Donnelly challenged the constitutionality of the dismissal procedures. The District Court dismissed for failure to state a claim, relying on its opinion in *Loudermill*.

The District Court denied a joint motion to alter or amend its judgment, 2 and the cases were consolidated for appeal. A divided panel of the Court of Appeals for the Sixth Circuit reversed in part and remanded. 721 F.2d 550 (1983). After rejecting arguments that the actions were barred by failure to exhaust administrative remedies and by res judicata - arguments that are not renewed here - the Court of Appeals found that both respondents had been deprived of due process. It disagreed with the District Court's original rationale. Instead, it concluded that the compelling private interest in retaining employment, combined with the value of presenting evidence prior to dismissal, outweighed the added administrative burden of a pretermination hearing. *Id.*, at 561-562. With regard to the alleged deprivation of liberty, and *Loudermill*'s 9-month wait for an administrative decision, the court affirmed the District Court, finding no constitutional violation. *Id.*, at 563-564. [470 U.S. 532, 538]

The dissenting judge argued that respondents' property interests were conditioned by the procedural limitations accompanying the grant thereof. He considered

constitutional requirements satisfied because there was a reliable pretermination finding of "cause," coupled with a due process hearing at a meaningful time and in a meaningful manner. *Id.*, at 566.

Both employers petitioned for certiorari. Nos. 83-1362 and 83-1363. In a cross-petition, Loudermill sought review of the rulings adverse to him. No. 83-6392. We granted all three petitions, 467 U.S. 1204 (1984), and now affirm in all respects.

II

Respondents' federal constitutional claim depends on their having had a property right in continued employment. 3 Board of Regents v. Roth, 408 U.S. 564, 576 -578 (1972); *Reagan v. United States*, 182 U.S. 419, 425 (1901). If they did, the State could not deprive them of this property without due process. See *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11 -12 (1978); *Goss v. Lopez*, 419 U.S. 565, 573 -574 (1975).

Property interests are not created by the Constitution, "they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law" *Board of Regents v. Roth*, *supra*, at 577. See also *Paul v. Davis*, 424 U.S. 693, 709 (1976). The Ohio statute plainly creates such an interest. Respondents were "classified civil service employees," Ohio Rev. Code Ann. 124.11 (1984), entitled to retain their positions "during good behavior and efficient service," who could not be dismissed "except . . . for . . . misfeasance, [470 U.S. 532, 539] malfeasance, or nonfeasance in office," 124.34. 4 The statute plainly supports the conclusion, reached by both lower courts, that respondents possessed property rights in continued employment. Indeed, this question does not seem to have been disputed below. 5

The Parma Board argues, however, that the property right is defined by, and conditioned on, the legislature's choice of procedures for its deprivation. Brief for Petitioner in No. 83-1363, pp. 26-27. The Board stresses that in addition to specifying the grounds for termination, the statute sets out procedures by which termination may take place. 6 The [470 U.S. 532, 540] procedures were adhered to in these cases. According to petitioner, "[t]o require additional procedures would in effect expand the scope of the property interest itself." *Id.*, at 27. See also Brief for State of Ohio et al. as Amici Curiae 5-10.

This argument, which was accepted by the District Court, has its genesis in the plurality opinion in *Arnett v. Kennedy*, 416 U.S. 134 (1974). *Arnett* involved a challenge by a former federal employee to the procedures by which he was dismissed. The plurality reasoned that where the legislation conferring the substantive right also sets out the procedural mechanism for enforcing that right, the two cannot be

separated:

"The employee's statutorily defined right is not a guarantee against removal without case in the abstract, but such a guarantee as enforced by the procedures which Congress has designated for the determination of cause.

.....

"[W]here the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of appellee must take the bitter with the sweet." *Id.*, at 152-154.

This view garnered three votes in *Arnett*, but was specifically rejected by the other six Justices. See *id.*, at 166-167 (POWELL, J., joined by BLACKMUN, J.); *id.*, at 177-178, 185 (WHITE, J.); *id.*, at 211 (MARSHALL, J., joined by Douglas and BRENNAN, JJ.). Since then, this theory has at times seemed to gather some additional support. See *Bishop v. Wood*, 426 U.S. 341, 355 -361 (1976) (WHITE, J., dissenting); *Goss v. Lopez*, 419 U.S., at 586 -587 (POWELL, J., joined [470 U.S. 532, 541] by BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., dissenting). More recently, however, the Court has clearly rejected it. In *Vitek v. Jones*, 445 U.S. 480, 491 (1980), we pointed out that "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." This conclusion was reiterated in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982), where we reversed the lower court's holding that because the entitlement arose from a state statute, the legislature had the prerogative to define the procedures to be followed to protect that entitlement.

In light of these holdings, it is settled that the "bitter with the sweet" approach misconceives the constitutional guarantee. If a clearer holding is needed, we provide it today. The point is straightforward: the Due Process Clause provides that certain substantive rights - life, liberty, and property - cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process "is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." *Arnett v. Kennedy*, *supra*, at 167 (POWELL, J., concurring in part and concurring in result in part); see *id.*, at 185 (WHITE, J., concurring in part and dissenting in part).

In short, once it is determined that the Due Process Clause applies, "the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The answer to that question is not to be found in the Ohio statute. [470 U.S. 532, 542]

III

An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *7 Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (emphasis in original); see *Bell v. Burson*, 402 U.S. 535, 542 (1971). This principle requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. *Board of Regents v. Roth*, 408 U.S., at 569-570; *Perry v. Sindermann*, 408 U.S. 593, 599 (1972). As we pointed out last Term, this rule has been settled for some time now. *Davis v. Scherer*, 468 U.S. 183, 192, n. 10 (1984); *id.*, at 200-203 (BRENNAN, J., concurring in part and dissenting in part). Even decisions finding no constitutional violation in termination procedures have relied on the existence of some pretermination opportunity to respond. For example, in *Arnett* six Justices found constitutional minima satisfied where the employee had access to the material upon which the charge was based and could respond orally and in writing and present rebuttal affidavits. See also *Barry v. Barchi*, 443 U.S. 55, 65 (1979) (no due process violation where horse trainer whose license was suspended "was given more than one opportunity to present his side of the story").

The need for some form of pretermination hearing, recognized in these cases, is evident from a balancing of the competing interests at stake. These are the private interest in [470 U.S. 532, 543] retaining employment, the governmental interest in the expeditious removal of unsatisfactory employees and the avoidance of administrative burdens, and the risk of an erroneous termination. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood. See *Fusari v. Steinberg*, 419 U.S. 379, 389 (1975); *Bell v. Burson*, *supra*, at 539; *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Snidach v. Family Finance Corp.*, 395 U.S. 337, 340 (1969). While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job. See *Lefkowitz v. Turley*, 414 U.S. 70, 83-84 (1973).

Second, some opportunity for the employee to present his side of the case is recurringly of obvious value in reaching an accurate decision. Dismissals for cause will often involve factual disputes. Cf. *Califano v. Yamasaki*, 442 U.S. 682, 686 (1979). Even where the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect. See *Goss v. Lopez*, 419 U.S., at 583 -584; *Gagnon v. Scarpelli*, 411 U.S. 778, 784 -786 (1973). 8 [470 U.S. 532, 544]

The cases before us illustrate these considerations. Both respondents had plausible arguments to make that might have prevented their discharge. The fact that the Commission saw fit to reinstate Donnelly suggests that an error might have been avoided had he been provided an opportunity to make his case to the Board. As for Loudermill, given the Commission's ruling we cannot say that the discharge was mistaken. Nonetheless, in light of the referee's recommendation, neither can we say that a fully informed decisionmaker might not have exercised its discretion and decided not to dismiss him, notwithstanding its authority to do so. In any event, the termination involved arguable issues, 9 and the right to a hearing does not depend on a demonstration of certain success. *Carey v. Piphus*, 435 U.S. 247, 266 (1978).

The governmental interest in immediate termination does not outweigh these interests. As we shall explain, affording the employee an opportunity to respond prior to termination would impose neither a significant administrative burden nor intolerable delays. Furthermore, the employer shares the employee's interest in avoiding disruption and erroneous decisions; and until the matter is settled, the employer would continue to receive the benefit of the employee's labors. It is preferable to keep a qualified employee on than to train a new one. A governmental employer also has an interest in keeping citizens usefully employed rather than taking the possibly erroneous and counterproductive step of forcing its employees onto the welfare rolls. Finally, in those situations where the employer perceives a significant hazard in [470 U.S. 532, 545] keeping the employee on the job, 10 it can avoid the problem by suspending with pay.

IV

The foregoing considerations indicate that the pretermination "hearing," though necessary, need not be elaborate. We have pointed out that "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." *Boddie v. Connecticut*, 401 U.S., at 378. See *Cafeteria Workers v. McElroy*, 367 U.S. 886, 894 -895 (1961). In general, "something less" than a full evidentiary hearing is sufficient prior to adverse administrative action. *Mathews v. Eldridge*, 424 U.S., at 343. Under state law, respondents were later entitled to a full administrative hearing and judicial review. The only question is what steps were required before the termination took

effect.

In only one case, *Goldberg v. Kelly*, 397 U.S. 254 (1970), has the Court required a full adversarial evidentiary hearing prior to adverse governmental action. However, as the *Goldberg* Court itself pointed out, see *id.*, at 264, that case presented significantly different considerations than are present in the context of public employment. Here, the pretermination hearing need not definitively resolve the propriety of the discharge. It should be an initial check against mistaken decisions - essentially, a determination of whether [470 U.S. 532, 546] there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. See *Bell v. Burson*, 402 U.S., at 540.

The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. See Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. See *Arnett v. Kennedy*, 416 U.S., at 170-171 (opinion of POWELL, J.); *id.*, at 195-196 (opinion of WHITE, J.); see also *Goss v. Lopez*, 419 U.S., at 581. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

V

Our holding rests in part on the provisions in Ohio law for a full post-termination hearing. In his cross-petition *Loudermill* asserts, as a separate constitutional violation, that his administrative proceedings took too long. 11 The Court of [470 U.S. 532, 547] Appeals held otherwise, and we agree. 12 The Due Process Clause requires provision of a hearing "at a meaningful time." E. g., *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). At some point, a delay in the post-termination hearing would become a constitutional violation. See *Barry v. Barchi*, 443 U.S., at 66. In the present case, however, the complaint merely recites the course of proceedings and concludes that the denial of a "speedy resolution" violated due process. App. 10. This reveals nothing about the delay except that it stemmed in part from the thoroughness of the procedures. A 9-month adjudication is not, of course, unconstitutionally lengthy per se. Yet *Loudermill* offers no indication that his wait was unreasonably prolonged other than the fact that it took nine months. The chronology of the proceedings set out in the complaint, coupled with the assertion that nine months is too long to wait, does not state a claim of a constitutional deprivation. 13

VI

We conclude that all the process that is due is provided by a pretermination opportunity to respond, coupled with posttermination [470 U.S. 532, 548] administrative procedures as provided by the Ohio statute. Because respondents allege in their complaints that they had no chance to respond, the District Court erred in dismissing for failure to state a claim. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Footnotes

[Footnote 1] The statute authorizes the Commission to "affirm, disaffirm, or modify the judgment of the appointing authority." Ohio Rev. Code Ann. 124.34 (1984). Petitioner Parma Board of Education interprets this as authority to reinstate with or without backpay and views the Commission's decision as a compromise. Brief for Petitioner in No. 83-1363, p. 6, n. 3; Tr. of Oral. Arg. 14. The Court of Appeals, however, stated that the Commission lacked the power to award backpay. 721 F.2d 550, 554, n. 3 (1983). As the decision of the Commission is not in the record, we are unable to determine the reasoning behind it.

[Footnote 2] In denying the motion, the District Court no longer relied on the principle that the state legislature could define the necessary procedures in the course of creating the property right. Instead, it reached the same result under a balancing test based on JUSTICE POWELL's concurring opinion in *Arnett v. Kennedy*, 416 U.S. 134, 168-169 (1974), and the Court's opinion in *Mathews v. Eldridge*, 424 U.S. 319 (1976). App. to Pet. for Cert. in No. 83-1362, pp. A54-A57.

[Footnote 3] Of course, the Due Process Clause also protects interests of life and liberty. The Court of Appeals' finding of a constitutional violation was based solely on the deprivation of a property interest. We address below Loudermill's contention that he has been unconstitutionally deprived of liberty. See n. 13, *infra*.

[Footnote 4] The relevant portion of 124.34 provides that no classified civil servant may be removed except "for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of administrative services or the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office."

[Footnote 5] The Cleveland Board of Education now asserts that Loudermill had no property right under state law because he obtained his employment by lying on the